



**MINUTES OF THE COMMON COUNCIL  
IN REGULAR SESSION  
JUNE 9, 2015**

A regular session of the Winchester Common Council was held on Tuesday, June 9, 2015, in the Council Chambers, Rouss City Hall. President John Willingham called the meeting to order at 6:00 p.m.

**PRESENT:** Councilor Evan Clark, John Hill, Kevin McKannan, Corey Sullivan and William Wiley; Vice-President Milt McInturff; Mayor Elizabeth Minor; Vice-Mayor Les Veach; President John Willingham (9)

**ABSENT:** None (0)

**MOMENT OF SILENCE** – President Willingham led the citizens and councilors in a Moment of Silence.

**PLEDGE OF ALLEGIANCE** – Mayor Minor led the citizens and councilors in the Pledge of Allegiance.

**APPROVAL OF MINUTES** – May 26, 2015 Regular Meeting and May 26, 2015 Work Session

Mayor Elizabeth Minor moved to approve the minutes as presented. *The motion was seconded by Vice-Mayor Veach then unanimously approved by voice-vote.*

**REPORT OF THE MAYOR** – Mayor Minor stated she did not have a report to present.

**REPORT OF THE CITY MANAGER** – City Manager Eden Freeman announced the contractor is making progress on the construction of the Meadow Branch extension this week after the delay caused by last week's significant rain. She stated progress also continues on the Green Circle Trail project. The contractor is working on the concrete retaining walls necessary to traverse the hill from Town Run to the top on Cecil Street. The contractor is on schedule and hopefully will be finished ahead of schedule. The City did issue a Request for Proposals for a developer, partner, or team for the Winchester Towers Redevelopment Project. She reminded everyone the proposals to the RFP are due July 24, 2015. She stated the repaving of Maple Drive through Jim Barnett Park which is from Cork Street to the Lowry Drive entrance began today. The crews started with the south portion of the road between Lowry Drive and the War Memorial Building and will finish up the remaining portion to Cork Street on Wednesday. She announced the main park entrance off Cork Street at the traffic light will be closed tomorrow and urged patrons to use the Bridgeforth Drive entrance off of Cork Street between the BMX track and Bridgeforth Field. She announced a Fire & Rescue Appreciation Celebration is going to be held on Thursday evening before the Old Town Movies on the Mall from 6:00 p.m. to dusk when the movie *Planes 2: Fire and Rescue*

will be shown. Fire & Rescue will have a number of trucks and apparatus there for children and families to explore. She announced the Shenandoah Apple Blossom Festival came in second in the USA Today's 10 best Reader's Choice voting for the Best Southern Event. There was a last minute take over by the Memphis in May Festival.

**REPORT OF THE CITY ATTORNEY** – City Attorney Anthony Williams stated he did not have a report to present.

## **1.0 PUBLIC HEARINGS**

### **1.1 CU-15-219:** Conditional Use Permit - Request of the City of Winchester for amphitheater use for the Taylor Pavilion at 119 N. Loudoun Street (Map Number 173-01-F-26) zoned B-1 (HW)

Josh Huff of 365 National Avenue spoke as the General Manager of the Bright Box Theater. He expressed his concerns regarding loud amplified music and private events being rented out in those facilities. His three main issues were there has been no sound study to determine what sound equipment would be best suited for that space; there are no public restrooms that can be used during the private events; and the time of day for the amplified music and the decibel level that should not be exceeded. He applauded the City for the amphitheater but urged Council to do it right the first time so it can be something to be proud of.

*President Willingham asked if there was anyone else wishing to address Council on this issue. Seeing none, he closed the public hearing at 6:06 p.m.*

Planning Director Tim Youmans provided a summary of the changes to the staff report to include the issues discussed at the May 26, 2015, Work Session regarding the noise levels at similar facilities and the hours of operation at Piccadilly Public House. He stated the outdoor venue at Piccadilly Public House is allowed to go until midnight on Sunday through Thursday evenings and 2:00 a.m. on Friday and Saturday evenings. The other condition applied to that Conditional Use Permit was that the business complies with the noise level provisions per City Code.

Councilor Clark asked Mr. Youmans to review the current sound ordinance in the City. Mr. Youmans deferred to the Zoning and Inspections Administrator, Aaron Grisdale, who stated there are maximum decibel readings that can occur in specific situations within City Code. In the downtown area, there are some special provisions that allow for additional flexibility in terms of the hours of operations and so forth. If there are noise concerns, the police department can come out with a decibel reader to determine if there are noise level violations.

Councilor McKannan asked how indoor amplification and outdoor amplification differ in terms of measuring decibel levels. Mr. Grisdale stated he would have to consult the ordinance before answering.

Councilor Wiley asked how the OTDB is on the changes. Mr. Youmans stated he consulted with Downtown Manager Jennifer Bell and she is comfortable with the changes.

Vice-Mayor Veach asked if a vote was taken from the OTDB. Ms. Bell stated it was not. The use of the Taylor Pavilion has been discussed with the OTDB but not this specific resolution.

Vice-Mayor Veach stated even though the applicant is the City, this item still needs to run through the same process as other items coming before Council. He expressed his concern about the hours for amplified music and stated he would be in favor of a bit earlier start and finish for the amplified sound.

Councilor Sullivan asked about the public restrooms being available and if there were plans to bring in temporary facilities. Ms. Freeman stated the Memorandum of Agreement with the Winchester Parking Authority is the restrooms will be open for City events.

President Willingham suggested delaying the amplification portion for more discussion and approving the conditional use permit so not to delay the application to use the facility. Ms. Bell stated amplification is intended to be used there for the first Friday Night Live event in two weeks.

Mr. Youmans stated this approval is basically just allowing the use to be established. The policies will still be coming back to Council for review.

President Willingham asked if there were any suggestions knowing there were some logistical items. Ms. Freeman stated knowing there is an event that had been planned before this was finalized; she suggested moving the event back to the location where it was held in prior years.

President Willingham suggested holding the event at the Taylor Pavilion as a test case. Ms. Freeman stated it could be done but Council would need to approve the Conditional Use Permit with the amplification limits in order for the City to even have the event as a test case.

Councilor Sullivan suggested approving the Conditional Use Permit with the caveat that a sound study be done to see what is loud and what is not. Ms. Freeman stated any event will have to meet the noise ordinance requirements. Anything above that and the City will shut down its own event.

Vice-President McInturff stated he is not going to support this but he wondered why an event was scheduled without going through this process.

Councilor Clark stated even when the City started the renovation of the Taylor Hotel the amphitheater was a key part of the whole project. The City always planned to have plays, music, farmers' markets and events in that center

section. The tenants in the apartments were well aware there would be amplified music there. The residents have been expecting it for the last two years. Numerous studies have shown that downtown residents expect to have more noise than someone who lives in a subdivision. He is going to support this conditional use permit.

Mayor Minor stated she agrees with Councilor Clark and suggested the 11:00 p.m. end time for Thursday night.

Councilor Hill stated he would like to know what the business owners have to say on this. It is very important that this does not drive away any business from the bars and restaurants already here. If this is approved, he would only agree to the 11:00 p.m. end time.

President Willingham stated he is sensitive to Thursdays not for the movies but for the live bands. He suggested allowing music on Friday and Saturday.

Ms. Freeman stated she asked Ms. Bell to reach out to the businesses after the work session to get their feedback and she has those results.

Ms. Bell stated she reached out specifically to those who have entertainment but she has not heard back from all of them yet. She stated Union Jack saw no reason why the music can't continue after 9:00 p.m. The Bright Box still has the same reservations that Mr. Huff mentioned earlier. George's at the George Washington Hotel saw no impact on their business. Joe's Steakhouse and Jolatos both said it will attract people and be a great addition. Brewbakers was concerned there would be an impact if food and drinks were served at the pavilion.

Councilor McKannan stated he was inclined to support the request but has some significant hang-ups about the amplification with the bands performing down there. He is also in favor of cutting the time back on Thursdays. At the same time, he is not happy about having to put this through because there are bands lined up to play. It seems like the cart is being put before the horse in this instance.

President Willingham stated in the past Council has put the condition of re-approval back on and suggested having the CUP come back after the first event to get feedback on the success of the event. Mr. Youmans stated Council could build in a mandatory review and re-approval or have it be based on complaints. He added that like the Piccadilly Public House outdoor venue, it will not go through the winter months so there probably will not be anything past October except for possibly First Night.

Vice-Mayor Veach stated he would be in favor of going forward with it without the amplification until the information on a study is received from OTDB or something like that. He can't go forward with this and then expect to pull it back.

President Willingham suggested setting an expiration date after the first event to force the CUP to come back.

Councilor Clark stated he is curious as to what his peers think will happen with amplified music. There has been amplified music at the Courthouse for years and he does not know of any noise complaints about that music. He recognizes that this is a smaller space with tall, brick walls so the sound will bounce more but he thinks this has been done before and he doesn't see there will be a problem. If it becomes an issue, the noise ordinance the City has in place will work to solve it.

Councilor Clark moved to approve CU-15-219 with the hours of operation ending at 11:00 p.m. on Thursdays, restrict the usage to no live bands on Thursdays but do allow movies, and a six month review by Council to determine the reactions of the downtown businesses and residents. The motion was seconded by Mayor Minor.

Councilor Weber expressed his concern that a six month review period will be outside of the time period the amphitheater will be used and moved to amend the motion to include a four month review period instead. *The motion was seconded by Councilor Clark then approved 7/2 with Vice-Mayor Veach and Councilor Hill voting in the negative.*

*Councilor Clark's amended motion passed 6/3 with Vice-President McInturff, Vice-Mayor Veach, and Councilor Hill voting in the negative.*

## **2.0 PUBLIC COMMENTS**

Arthur Christjohn of 523 Fairmont Avenue reported a "GoGo Games" truck has been parked in the National Fruit parking lot for a year and a half with out of state tags on it. He stated it hasn't moved in over 60 days and meets the requirement of junk vehicle and should be removed immediately. He also reported that he receives five telephone books a year. He stated the books do not have enough information in them and they are outdated before they arrive so they are not needed. He asked that the telephone books be addressed somehow.

*President Willingham asked if there was anyone else wishing to address Council. Seeing none, he closed the public hearing at 6:34 p.m.*

## **3.0 CONSENT AGENDA**

### **3.1 O-2015-12: First Reading – AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES FOR FISCAL YEAR 2015**

- 3.2 R-2015-21:** Resolution – Approving Virginia Department of Rails and Public Transportation Financial Assistance
- 3.3 R-2015-22:** Resolution – Approving Federal Transit Administration Financial Assistance
- 3.4 R-2015-23:** Resolution – CEMS Amendments Sections 3.9, 3.10, 5.3-5.5, 5.14, Appendix J, K and the addition of Appendix DD

Mayor Minor moved to approve the Consent Agenda as presented. *The motion was seconded by Councilor Wiley then unanimously approved by voice-vote.*

#### **4.0 AGENDA**

- 4.1 O-2015-13:** First Reading – AN ORDINANCE TO AMEND ARTICLES 1, 8, 9, 10, AND 11 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITION AND USES PROVISIONS OF IMPROVEMENT DONATION CENTERS. (*Proposal will create a definition and district use provisions for Home Improvement Donations Centers.*) TA-15-177

#### **5.0 EXECUTIVE SESSION**

- 5.1** MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION AND PURSUANT TO §2.2-3711(A)(1) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, PERFORMANCE AND APPOINTMENT OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER, AND PURSUANT TO §2.2-3711(A)(3) OF THE CODE OF VIRGINIA FOR CONSIDERATION OF THE DISPOSITION OF AN INTEREST IN REAL PROPERTY WHERE THE PUBLIC DISCLOSURE OF SUCH INFORMATION COULD HAVE AN ADVERSE EFFECT ON THE CITY'S BARGAINING POSITION.

Vice-Mayor Veach moved to convene into executive session at 6:36 p.m. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Vice-Mayor Veach moved to reconvene in open session at 7:03 p.m. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Upon returning, each member certified that only public business matters lawfully exempted from open meeting requirements of the Virginia Freedom of Information Act were discussed during the closed meeting, and that only those public business matters identified in the motion which convened the closed meeting were heard, discussed, or considered during the closed meeting.

*A roll call vote was taken, the ayes and nays being recorded as shown below:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Councilor McKannan	Aye
Mayor Minor	Aye
Councilor Sullivan	Aye
Vice-Mayor Veatch	Aye
Councilor Wiley	Aye
President Willingham	Aye

## **6.0 ADJOURNMENT**

Mayor Minor moved to adjourn the meeting at 7:04 p.m. *The motion was seconded by Councilor Wiley then unanimously approved by voice-vote.*

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Kari J. Van Diest, CMC  
Deputy Clerk of Council